

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ANDY MILLER,

*Petitioner,*

vs.

RENEE BAKER, *et al.*,

*Respondents.*

3:11-cv-00521-ECR-VPC

ORDER

Petitioner has submitted an application (#1) to proceed *in forma pauperis* and a habeas petition.

The matter has not been properly commenced because the pauper application does not include all required attachments. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2, the petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner did not submit an inmate account statement for the past six months. Both an executed financial certificate and an inmate account statement are required.

The application therefore will be denied, and the present action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper application on the proper form with all required attachments. It does not appear from the papers presented that a dismissal without prejudice would result in a promptly filed new petition being untimely.<sup>1</sup>

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<sup>1</sup> The papers on file reflect the following. Petitioner's conviction was affirmed on direct appeal on  
(continued...)

1 IT THEREFORE IS ORDERED that the application (#1) to proceed *in forma pauperis*  
2 is DENIED and that this action shall be DISMISSED without prejudice to the filing of a new  
3 petition in a new action with a new pauper application with all required attachments.

4 IT FURTHER IS ORDERED that a certificate of appealability is DENIED as to the  
5 dismissal without prejudice.

6 IT FURTHER IS ORDERED that the Clerk of Court shall send petitioner two copies  
7 each of a noncapital habeas petition form and an application form to proceed *in forma*  
8 *pauperis* for incarcerated persons, one copy of the instructions for each form, and a copy of  
9 the papers that he submitted in this action.

10 The Clerk shall enter final judgment accordingly, dismissing this action without  
11 prejudice.

12 DATED: July 27, 2011.

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15 EDWARD C. REED  
16 United States District Judge  
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25 <sup>1</sup>(...continued)

26 January 8, 2010, and the time for seeking *certiorari* would have expired ninety days later, on or about April 8,  
27 2010. Petitioner filed a state post-conviction petition on March 25, 2010, prior to the expiration of the period  
28 for seeking *certiorari*. The Supreme Court of Nevada affirmed the denial of state post-conviction relief on  
May 10, 2011, and the remittitur would have issued thereafter on or about June 6, 2011. It thus appears that  
little time has elapsed in the federal one-year limitation period under 28 U.S.C. § 2244(d). Petitioner at all  
times remains responsible for calculating the running of the federal limitation period as applied to his case  
and properly commencing a timely-filed federal habeas action.